

*United States Court of Appeals
for the Second Circuit*



APPENDIX

74-1550

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

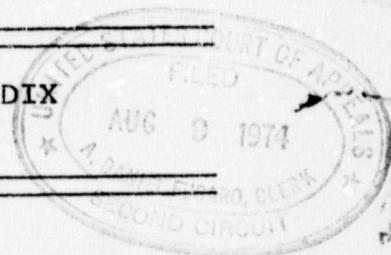
-against-

CARMINE TRAMUNTI, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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DEFENDANTS-APPELLANTS' JOINT APPENDIX
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2 Q And where did you go on those occasions?

3 A Mr. Engel's office.

4 Q And you talked about the case, right?

5 A Yes.

6 Q How much time did you spend on each occasion
7 I indicated over an hour each time before I got to talk
8 with Mr. Engel. I would say possibly two hours on
9 each occasion.

10 Q Well, two hours in addition to the hour that
11 Mr. Engel inconsiderately kept you waiting, right?

12 A Right.

13 Q So that if you were here on about three occasions
14 that would mean last week you spent a total of six hours
15 discussing this case with Mr. Engel, is that right?

16 A Yes.

17 Q And on one of those occasions did somebody tell
18 you, perhaps Mr. Engel, perhaps somebody else, that Harry
19 Palmirello has not identified Henry Salley in court?

20 A No, sir.

21 Q Nobody told you that?

22 THE COURT: Mr. Pollak, do you think
23 this would be an appropriate time?

24 MR. POLLAK: I think so. I think I might
25 even be finished, but I would like to --

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2 THE COURT: All right. We are going to
3 take our lunch break now.

4 Marshal, take the jury out. Everybody
5 else remain seated, please.

6 (The jury left the courtroom.)

7 THE COURT: All right, Mr. Provitera, you may
8 be excused.

9 (Witness left the courtroom.)

10 THE COURT: Gentlemen, we will resume at
11 2 o'clock.

12 (Luncheon recess.)

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AFTERNOON SESSION(2:00 p.m.)

(In open court; jury not present.)

5 THE COURT: Mr. Leighton, how long do you
6 expect to be on cross?

7 MR. LEIGHTON: Judge, the last time you asked
8 me that question I think I should have spoken to counsel
9 first.

10 I expect maybe 15, 20 minutes.

11 THE COURT: Mr. Sunden?

12 MR. SUNDEN: Ten, 15 minutes.

13 THE COURT: I assume that Mr. Pollak is
14 finished. If he is not, I guess we can sneak him in
15 after you, Mr. Leighton.

16 You are set to go; I assume?

17 MR. LEIGHTON: I am set.

18 THE COURT: All right. Let us bring in
19 the jury.

20 Mr. Pollak, I assume that you are finished.

21 Are you?

22 MR. POLLAK: Yes. Your Honor, I am
23 afraid you assumed wrong. Before lunch I indicated I
24 might have a couple more questions.

25 THE COURT: All right.

2 MR. POLLAK: I would like just a few
3 more. I will be very brief.

4 THE COURT: All right. Did you get that
5 stuff from Washington?

6 MR. POLLAK: No, I did not. I am going
7 to rest on the hearing at the recess or perhaps later
8 in the day.

9 THE COURT: All right, fine.

10 MR. ENGEL: For the record, your Honor, the
11 government does not wish to call any witnesses at the
12 hearing.

13 THE COURT: In connection with the hearing?

14 MR. ENGEL: That's correct.

15 (Jury present.)

16 MR. LEIGHTON: Judge, Mr. Panzer will be a
17 little late. He asked me to cover for him. Miss
18 Ware has consented.

19 THE COURT: All right.

20 P A S Q U A L E P R O V I T E R A resumed.

21 CROSS EXAMINATION CONTINUED

22 BY MR. POLLAK:

23 Q Mr. Provitera, before lunch you recall that I
24 asked you about whether you had seen your brother-in-
25 law in the courthouse and you replied negatively.

2 Now let me ask you, has anyone during your
3 various discussions shown you a transcript of what
4 has been going on at the trial so far?

5 MR. ENGEL: Your Honor, I object. That mis-
6 characterizes his testimony. He said that he had
7 seen his brother-in-law in the courthouse at one point.

8 THE COURT: The question is did you see a tran-
9 script of what has been going on?

10 THE WITNESS: No, sir.

11 THE COURT: The answer is "No, sir," is that
12 correct?

13 THE WITNESS: Yes.

14 BY MR. POLLAK:

15 Q You did say you saw your lawyer, Mr. Mitchell,
16 in the courthouse the day before yesterday, is that
17 right?

18 A Yes.

19 Q And was he here at your request?

20 A No, sir.

21 Q In other words, you didn't expect to see him
22 here when you came?

23 A Right.

24 Q Do you know if he was here at Harry's request?

25 A I don't know, sir.

2 Q By the way, when was the last time you saw your
3 other brother-in-law, John Pannirello?

4 A John Pannirello isn't my brother-in-law.

5 Q I see. But you know him?

6 A Yes.

7 Q And when was the last time you saw him?

8 A Approximately a month.

9 Q Did you discuss your testimony with him,,
10 what you were going to say, what he was going to say if
11 he was called?

12 A No, I didn't.

13 Q Mr. Provitera, did you yourself use heroin?

14 A No, sir.

15 Q Never used it, have you?

16 A No, sir.

17 Q Have you known anyone that has been a heroin
18 user, an addict?

19 A Yes, sir.

20 Q So you know the effects of continuous heroin
21 use, don't you?

22 MR. ENGEL: I object, your Honor. This is
23 irrelevant.

24 THE COURT: I will permit it.

25 Go ahead, answer the question.

2 A Would you repeat the question?

3 Q You know the effect of continuous heroin use
4 upon a person, right?

5 MR. SIEGAL: I object to the form.

6 A No, sir. I never saw --

7 MR. SIEGAL: I object to the form, Judge.

8 THE COURT: All right, I will sustain it.

9 MR. POLLAK: I will withdraw that line.

10 Q When you pleaded guilty in New Jersey, that
11 was in the New Jersey federal court?

12 A Yes.

13 Q And you pleaded guilty to two counts? 1115 T-1

14 A Yes. Yes

15 Q At that time the judge told you that you
16 could get up to 15 years on each count or a total of 30
17 years, isn't that right?

18 A Yes.

19 Q And on the charge up to date you have done about
20 five days in jail, is that right?

21 A Yes.

22 Q Was it a pleasant experience, Mr. Provitera?

23 A Pleasant in what way?

24 Q Did you enjoy it?

25 A I enjoyed being home better.

2 Q Right. In other words, you don't want to
3 go to jail on that charge that you are facing in Jersey,
4 right?

5 A Right.

6 Q And in fact would you do anything at all to
7 avoid going to jail?

8 A Anything at all is very broad. Could you
9 give me a specific?

10 Q Well, let's say if somebody told you if you
11 delivered drugs you wouldn't have to go to jail, would you
12 deliver drugs?

13 A No more, sir. A No more, sir.

14 Q No more? You went out of that business?

15 A Yes.

16 Q Tell me, sir, if the government hadn't caught
17 up with you in February of 1973 wouldn't you still be in
18 that business?

19 A I can't say, sir.

20 Q Well, when did you decide that that business
21 wasn't for you?

22 A It was decided for me.

23 Q Sir, you went into the business for money,
24 right?

25 A Yes.

Q But you were making a decent living at the

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Provitera-cross

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2 time you went into the business, -right?

3 A Yes.

4 Q And you are making a decent living at legiti-
5 mate pursuits today, correct?

6 A Yes.

7 Q If you went to jail for 30 years, that would
8 cost you a lot of money, wouldn't it, money that you could
9 eatn on the outside, right?

10 A Yes.

11 Q So let me ask you again, could you think of any-
12 thing that you would not do to stay out of jail?

13 A I could think of a lot things I wouldn't
14 do.

15 Q Would you lie to stay out of jail?

16 A Not under oath, sir.

17 Q Not under oath? Thank you.

18 THE COURT: All right, Mr. Leighton.

19 CROSS EXAMINATION

20 BY MR. LEIGHTON:

21 Q Mr. Provitera, before coming to court today
22 did anybody mention the name of Mr. Panzer to you?

23 A No, sir.

24 Q When you were questioned before the luncheon

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2 recess by Mr. Pollak he asked you a question and you
3 said to him you gave the answer to Mr. Panzer, did you?

4 A Did I say that? I don't recall, sir.

5 Q As you sit there now is your recollection
6 refreshed as to whether or not you said that?

7 A No, sir, it is not.

8 Q Do you know who Mr. Panzer is?

9 A No, sir.

10 Q So is it your testimony you never said that?

11 A It is my testimony that I don't remember.

12 MR. LEIGHTON: Judge, may I have one moment?

13 THE COURT: Yes.

14 (Pause.)

15 Q Did you ever hear of the name Mr. Panzer?

16 A Yes.

17 Q Prior to my mentioning it?

18 A Yes.

19 Q When?

20 A He's one of the attorneys here. I'm not
21 sure which.

22 Q Who told you that?

23 A I saw it on a paper.

24 Q Do you know who the attorney is?

25 A Is he the attorney that cross examined me this

2 morning? -----

3 Q Who is he in the courtroom?

4 A I told you I don't -- the name does not go
5 with the face, you know.6 Q What piece of paper did you see this on, Mr.
7 Provitera?8 A I saw a piece of paper with a list of all
9 the attorneys for this case.

10 Q Who showed this to you?

11 A No one showed it.

12 Q Do you have that paper with you?

13 A No, I don't. No. I don't.

14 Q Where did you see it? did you see it?

15 A I saw it in Mr. Engel's office.

16 Q And when was that?

17 A I don't recall when, I just recall seeing it.

18 Q Mr. Provitera, you were arrested February, 1973?

19 A Yes. -----

20 Q Shortly thereafter your brother-in-law Harry
21 Pannirello was arrested?

22 A Yes.

23 Q And shortly thereafter his brother John Pan-
24 nirello was arrested?

25 A Yes.

2 Q Did the three of you make bail at the same
3 time?

4 A No.

5 Q Who was out first?

6 A Harry Pannirello and I.

7 Q John came out afterward?

8 A Yes.

9 Q Who retained the attorney that represented the
10 three of you?

11 A The three of us.

12 Q And did you see this lawyer for the first time
13 together?

14 A Yes.

15 Q And where did you do that, at his office or at
16 your home?

17 A At his office.

18 Q And when you saw the attorney did you have a
19 copy of the indictment with you?

20 A I don't recall.

21 Q Do you know if he had a copy of the indictment?

22 A I don't recall.

23 Q Did you discuss the case?

24 A Yes.

25 Q The three of you and the attorney?

2 A Yes.

3 Q The four of you were in one room together?

4 A Yes.

5 Q How many times did the four of you discuss
6 this case before you decided to become an informant?

7 A Four, five times.

8 Q After you discussed the case among the four of
9 you, the three of you and your attorney, did you discuss
10 the case outside the presence of the attorney, just among
11 yourselves?

12 A Possibly. I don't recall the conversation.

13 Q Without giving us the details of the conver-
14 sation did such conversations take place after your
15 meetings with the attorney?16 A Possibly, but I don't recall the conversa-
17 tion.18 Q So you would say though you did discuss the
19 case without the attorney present?

20 A Yes.

21 Q When was the first time that you spoke with the
22 agents without your attorney present?

23 A June, I think. June or July.

24 Q And was your brother-in-law and his brother pre-
25 sent at the same time?

2 A Yes.

3 Q So the three of you were together and you
4 discussed the case with the agent?

5 A Yes.

6 Q Did you tell your story to the agent?

7 A Yes.

8 Q The three of you tell the story to the agent
9 at the same time?

10 A We didn't all speak at once, but --

11 Q You all spoke while you were together in the
12 presence of each other?13 A Yes, yes, that's correct. ~~Not that is correct~~14 Q The first time you told your story to the agent,
15 was that story recorded? Was there a tape recorder
16 present that you were aware of?

17 A Not that I was aware of, no.

18 Q So the first time that you, Harry and John
19 met with the agents and told your story, that conversation
20 was not recorded?

21 A Not that I know of, no.

22 Q After you discussed with the agent for the
23 first time and you left did you, Harry and John discuss
24 the case again amongst yourselves?

25 A Possibly, yes.

2 Q How many times did you speak to the agent your-
3 self before your conversation was recorded?

4 A A rough estimate would be three or four.

5 Q And those conversations were not recorded, to
6 your knowledge?

7 A Not to my knowledge, no.

8 Q Then to the best of your recollection, around
9 the fifth time that you spoke to an agent, then your story
10 was recorded, is that right?

11 A Yes.

12 Q Do you know how many times Harry spoke to the
13 agents before his story was recorded?

14 A I couldn't say for sure, but I would think
15 about the same amount.

16 Q By the way, did Harry ever tell you that they
17 recorded one of his conversations?

18 A I don't recall.

19 Q Did you ever tell him that one of your conver-
20 sations were recorded?

21 A I don't recall.

22 Q Did anybody ever show you --

23 MR. LEIGHTON: I will withdraw that.

24 Q You saw Government's Exhibit 3579, did you
25 not?

2 A Yes.

3 Q This is your statement that was recorded, is
4 that right?

5 A Yes, yes.

6 Q Did you ever see one of these of Harry's
7 conversations with the agents?

8 A No, I haven't.

9 Q Did Harry ever tell you that he saw one like
10 this?

11 A No, he didn't.

12 Q When was the first time you saw yours, Govern-
13 ment's Exhibit 3579, your statement?14 A I think it was on one of my meetings last
15 week.16 Q After you saw the agent for approximately the
17 fifth time and you testify it was on that occasion
18 that the story you gave him was tape-recorded, when there-
19 after did you speak to any agent or United States attorney
20 concerning your case?

21 THE COURT: I assume you mean this case.

22 MR. LEIGHTON: Yes, your Honor, this
23 case. I'm sorry.24 A I can't recall exactly, but I think it would
25 have been before the grand jury hearing.

2 Q Could you give us an approximate date when
3 you spoke with the agent and your conversation was
4 recorded?

5 A The best I could do is June or July, some-
6 where around there.

7 Q If 1973?

8 A '73.

9 Q Do you have any recollection when you testified
10 before the grand jury?

11 A Repeat that, please?

12 Q Do you have any recollection as to when you
13 testified before the grand jury concerning this case?

14 A It was around that period, in the summer
15 some time. I don't recall the date.

16 Q Who did you speak to first in the United
17 States Attorney's Office, Mr. Engel or Mr. Phillips?

18 A Mr. Phillips.

19 Q And were you in the presence of Agent Nolan
20 at that time?

21 A I don't recall. I could have been. I
22 don't recall.

23 Q Who set up the appointment with you to see
24 Mr. Phillips, was it your attorney or Agent Nolan?

25 A It wasn't my attorney. It possibly could

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Provitera-cross

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2 have been Agent Nolan.

3 Q Did Agent Nolan tell you that they made an
4 appointment to see one of the prosecutors so you could
5 tell your story to him?

6 A I don't recall how it came about. I do re-
7 call meeting with Mr. Phillips.

8 Q How many times did you meet with Mr. Phillips
9 before you met with Mr. Engel?

10 A Once.

11 Q Did you tell Mr. Phillips your story?

12 A Yes, I think I did.

13 Q You had your story pretty well pat by then?

14 You knew what you were going to tell Mr. Phillips, is
15 that right?

16 A I didn't know what Mr. Phillips was going to
17 ask me.

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2 Q What did Mr. Phillips say to you?

3 A To my recollection, about my involvement in the
4 case.

5 Q Didn't he say to you, "Tell me your story"?

6 A In effect, I would say yes.

7 Q And you told him your story?

8 A Yes.

9 Q You told him the story that you had spoken to
10 the agents about five times, the story you had spoken to
11 John and Harry about on a few occasions and the story you
12 spoke to your lawyer about, is that right?

13 A I don't recall exactly all those things men-
14 tioned.

15 Q But you do recall --

16 A I do recall talking to Mr. Phillips, yes.

17 Q Did he tape record your story?

18 A Not to my knowledge.

19 Q Then you thereafter spoke with Mr. Engel?

20 A A long time after that, yes.

21 Q When was that?

22 A Within the last month, you know, the last 30
23 days..

24 Q Was it at that time that Mr. Engel showed you
25 Government's Exhibit 53, your typewritten statement that

1 hp2

Provitera-cross

2 was recorded?

3 A No. I think I stated before that I saw that
4 about a week ago.5 Q By the way, after your conversation was recorded
6 on your fifth or sixth visit to Agent Nolan, did you ever
7 listen to that recording?

8 A Yes, I did.

9 Q When was that?

10 A I can't say exactly, but two or three months
11 ago I heard it.

12 Q Did you hear Harry's recording?

13 A No, I didn't. No, I didn't.

14 Q Before you went down to see Mr. Phillips and
15 Mr. Engel did Agent Nolan tell you in words or substance
16 that "If you tell the government the story that you just
17 told me we'll go to bat for you before the judge at the
18 time of your sentence"?

19 A Agent -- repeat that.

20 Q Are you all right?

21 A Yes. Are you?

22 Q You need a glass of water?

23 A No, I am fine.

24 MR.LEIGHTON: Could you read that last question
25 back?

2 (Question read.)

3 A Agent Nolan talked to me along those lines.
4 I don't know if it was before I went to see Mr. Phillips
5 or -- throughout the case Agent Nolan has told me to just
6 tell the truth and I would have nothing to worry about and
7 that they will tell the sentencing judge that I have cooperat-
8 ed and told the truth.

9 Q Agent Nolan told you this before you ever met
10 Mr. Phillips and Mr. Engel, isn't that so, Mr. Provitera?

11 A He may have. I don't recall.

12 Q Mr. Provitera, when you were first arraigned on
13 your indictment -- you know what an arraignment is, don't
14 you?

15 A Yes.

16 Q -- you pleaded not guilty, is that correct?

17 A Yes.

18 Q And you didn't cooperate or run to the govern-
19 ment and say, "Hey, I want to cooperate" until some months
20 after your arraignment, is that true?

21 A Yes.

22 Q And this is after you spoke with your attorney
23 and discussed the case?

24 A Yes.

25 Q And after you discussed the case with Harry and

1 hp4 Provitera-cross

2 John?

3 A Yes.

4 Q And after discussing the case with your attorney,
5 Harry and John, the three of you, you, Harry and John,
6 decided that "Hey, we better go to the agents and see if
7 we can make a deal for ourselves"? Didn't you come to that
8 conclusion?

9 A No, it didn't happen that way at all.

10 Q You didn't go to the agents to make a deal?

11 A No.

12 Q Did you go to the agents to help yourself?

13 A What happened -- What happened --

14 Q Yes or no. Did you go to the agents to try to
15 help yourself?

16 MR. ENGEL: Your Honor, I object. The witness
17 was trying to answer and he was interrupted.

18 THE COURT: Answer it yes or no if you can.

19 A Yes.

20 Q Mr. Provitera, let me ask you this question:
21 it's your testimony that you went to speak to the agents
22 to help yourself but not to make a deal? Is that your
23 testimony?

24 A Yes.

25 Q When you went to the agents and told them this

1 hp5

Provitera-cross

2 story didn't you say to Agent Nolan, "Well, what are you
3 going to do for us"?

4 A No, I don't recall saying that.

5 Q How many meetings did you have with him before
6 he told you he would speak up in your behalf before the
7 sentencing judge?

8 A He said that, to the best of my recollection,
9 on the first meeting.

10 Q The very first meeting?

11 A I think so, yes.

12 Q If he didn't say that to you you wouldn't be an
13 informant, would you? informant. would you? informant. would

14 A I can't tell what course of events would have
15 happened after that.

16 Q In any event, he did tell you that?

17 A Yes.

18 Q Did he tell you he would speak to the judge or
19 did he say he would have one of the government attorneys
20 speak to the judge?

21 A He said that he would and that Mr. Phillips or
22 someone would.

23 Q So when you gave your statement to Agent Nolan
24 and to Mr. Phillips and to Mr. Engel you told them about
25 Harry, John, yourself, Tennessee, is that correct?

1 hp6

Provitera-cross

2 A Yes, in effect.

3 Q And you don't see any of those people here in
4 court today, do you?

5 A No, I don't.

6 Q By the way, Mr. Provitera, do you know Carmine
7 Pugliese?

8 A I met him once.

9 Q Do you see him here in court?

10 A No, I don't.

11 Q Did you look around already?

12 A I looked before.

13 Q Before when, this morning? when, this morning?

14 A I will look again if -- will look again if --

15 Q Go ahead, look.

16 A No, sir, I don't.

2 17 Q Mr. Provitera, are you aware that you could still
18 be prosecuted by the State of New York for the crimes that
19 you have testified to about selling narcotics?

20 MR. ENGEL: Objection, your Honor.

21 THE COURT: I will permit it. Are you aware
22 of it?

23 A No, I wasn't.

24 Q Would you like time to speak to counsel before
25 I ask you any further questions?

1 hp7

Provitera-cross

2 A Counsel is not here.

3 Q Would you like time to speak to your counsel
4 before I ask you further questions?

5 MR. ENGEL: I object, your Honor.

6 THE COURT: I will sustain it.

7 Q You dont think you will be prosecuted by the
8 state authorities, do you, Mr. Provitera?

9 A I hope not.

10 Q By the way, Mr. Provitera, when did you become
11 vice-president of the caulking company that you testified
12 about?

13 A Approximately three years ago. Approximately three years ago.

14 Q Did that corporation file a business charter?

15 A Yes.

16 Q And you are filed as a vice-president?

17 A Yes.

18 Q Has the corporation paid income taxes the last
19 three years?

20 A Yes.

21 Q Have you paid personal income taxes the last
22 three years?

23 A Yes.

24 Q By the way, did you file your 1973 returns yet?

25 A No, I didn't.

1 hp8

Provitera-cross

2 Q In your '71 and '72 returns did you file and
3 report the money you made from selling drugs?

4 A No, I didn't.

5 Q Are you aware that the federal government could
6 prosecute you for those crimes?

7 A Yes.

8 Q You don't expect to be prosecuted for those
9 crimes either, do you?

10 A I hope not.

11 Q And you hope after you testify here that Mr.
12 Phillips or Mr. Engel talks in your behalf before your
13 sentencing judge, don't you, Mr. Provitera? Don't you, Mr. Provitera?

14 A Yes, I do.

15 Q After you met with Mr. Phillips you said some
16 time elapsed and you met Mr. Engel, is that right?

17 A Yes.

18 Q You told Mr. Engel the same story that you told
19 the agents and you told Mr. Phillips?

20 A In effect, yes.

21 Q Mr. Engel told you that he would be the prosecutor
22 who would question you in front of the jury?

23 A He may have. I don't recall.

24 Q How many times did he ask you to tell your story
25 to him?

1 hp9

Provitera-cross

2 A I met Mr. Engel approximately four times and I
3 went over parts of the testimony each time and the last
4 time was the full testimony.

5 Q In other words, he went over the last time the
6 full testimony that you are talking about, he asked you
7 all the questions that he said he would ask you in front of
8 this jury, is that right?

9 A Yes.

10 Q Mr. Provitera, you testified in court here several
11 times -- I withdraw that -- you met a man named Allen on
12 several occasions, is that right?

13 MR. ENGEL: Your Honor, I can't tell whether the
14 question is put or withdrawn.

15 MR. LEIGHTON: I will withdraw both questions
16 then, your Honor.

17 THE COURT: All right, fine.

18 Q Mr. Provitera, you testified that on several
19 occasions you met a man who you knew as Allen and later
20 found out to be Warren Robinson, is that right?

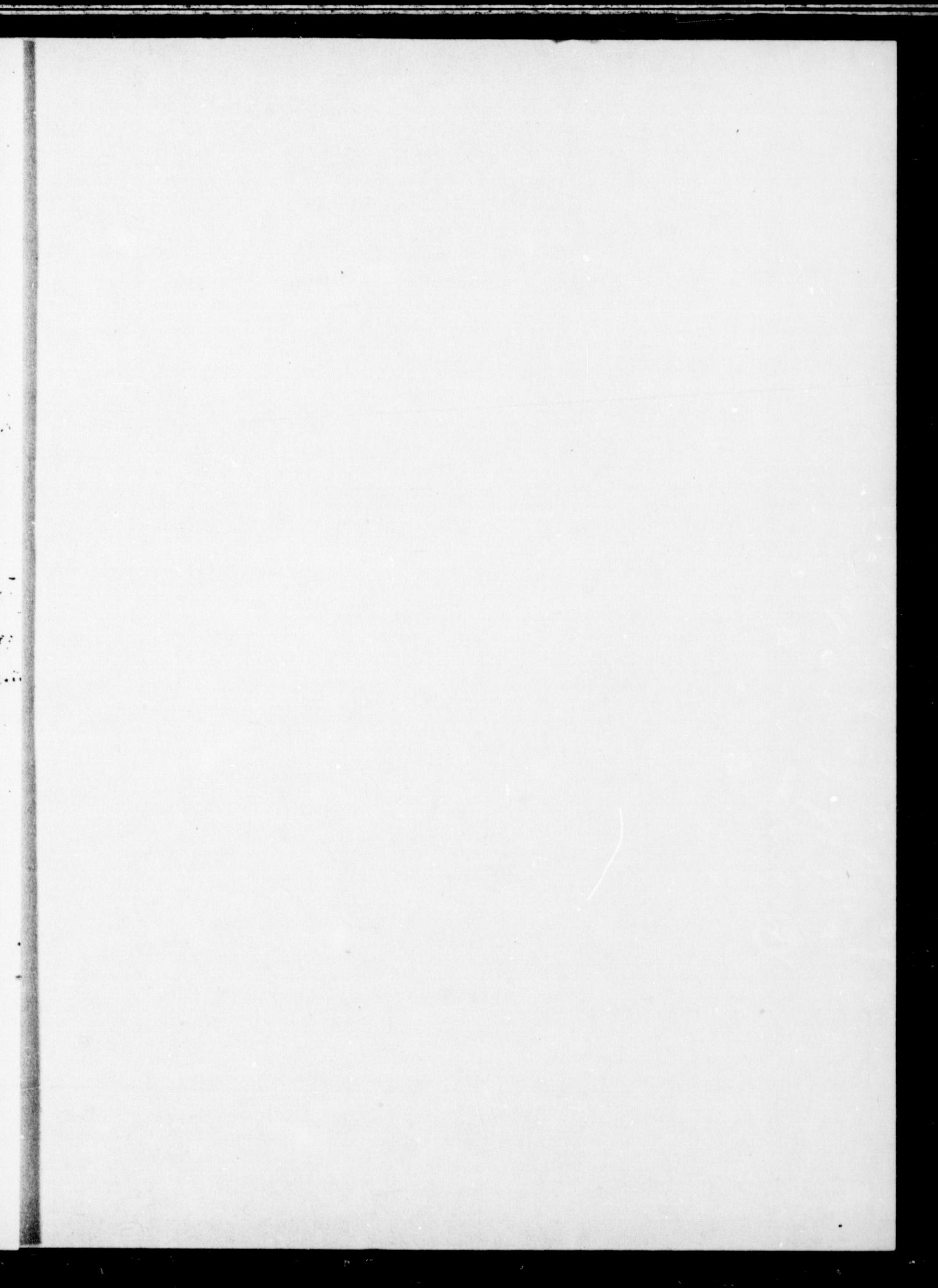
21 A Yes.

22 Q How many times did you meet this man Allen who
23 you say is Warren Robinson?

24 A It was three or four.

25 Q And you spoke to him on all occasions? You spoke

1 hpl0 Provitera-cross
2 to him on those three or four occasions?
3 A Yes.
4 Q And you were real close to him on those three
5 or four occasions? I mean physically.
6 A Physically real close to him? Yes.
7 Q The first time that you met him, how long would
8 you say that meeting lasted?
9 A A few minutes.
10 Q How about the second meeting?
11 A The second meeting was a little longer, possibly
12 five, ten minutes.
13 Q How about the third meeting?
14 A About five minutes, ten minutes.
15 Q How about the fourth meeting?
16 A The same.
17 Q And the fifth meeting?
18 A Was there a fifth? I don't recall.
19 Q The fourth meeting, whatever it is. Was the
20 fourth the last meeting?
21 A I don't recall. Each meeting was five, ten
22 minutes, something like that.
23 Q The second time you met him you recognized him,
24 you had no trouble identifying him, did you?
25 A No.



1 hpl1

Provitera-cross

2 Q And the third time you met him you had no trouble
3 recognizing him or identifying him, did you?

4 A No.

5 Q -And the fourth time you met him you had no
6 trouble recognizing him or identifying him, did you?

7 A No.

8 Q Mr. Provitera, when you were asked in court to
9 pick out Butch Ware didn't you point to Warren Robinson and
10 say, "That's Butch Ware"?

11 A Yes, I did.

12 Q Mr. Provitera, you testified that you went to
13 a bar called the Jungle or Jingle? I am not sure about
14 the name, but you testified you went to a bar with a name
15 like that, is that right?

16 A Yes, I did.

17 Q - As you sit here now, do you know whether that
18 bar is Jungle or Jingle?

19 A No. It's either jungle or jingle.

20 Q You also testified to an occasion where you went
21 and parked your car by a factory and then took a walk to a
22 bar, sat there for a half-hour and came back, is that
23 right?

24 A Yes.

25 Q Which event took place first?

1 hpl2

Provitera-cross

2 A To the best of my recollection, the event by the
3 Jungle or Jingle Bar.

4 Q And that is what you testified here the other day,
5 is that right?

6 A Yes.

7 Q You remember testifying to that?

8 A Yes.

9 Q And you testified to that when Mr. Engel was
10 asking you a series of questions about alleged transactions
11 that you had, is that right?

12 A Yes.

13 Q If I am not mistaken, you remembered going to
14 the Jungle Bar because you said it happened about a week
15 or so after you met Tennessee in May, is that right?

16 A I don't recall that. Would you say that
17 again?

18 Q Did you testify that you met Tennessee in May
19 on a weekend and you said you remembered meeting him
20 because it was a Saturday or a Sunday? You remember that
21 testimony, don't you?

22 A I didn't say that I met Tennessee.

23 Q Not at the Jungle Bar, prior to the Jungle Bar.

24 A No, I didn't say that I met him. I said that
25 I took a ride with Harry Pannirello where Harry Pannirello

1 hpl3

Provitera-cross

2 met him.

3 Q Did you see Harry meet him?

4 A I saw Harry meet with someone who Harry later
5 told me was Tennessee.6 Q So you saw Tennessee then in May and you said you
7 remember that day because it was a Saturday or Sunday, is
8 that right?

9 A Yes.

10 Q And you testified to that in court when Mr. Engel
11 was asking you these questions, is that right?

12 A Yes.

13 Q And this was one of the questions that he had
14 asked you at the last meeting that you had with him, is
15 that right?

16 A Yes.

17 Q I can't hear you.

18 A Yes.

19 Q You testified, I believe, after Harry told you
20 that that was Tennessee that you saw a week or so later
21 you went to the Jungle Bar, is that right?

22 A Yes.

23 Q You have no doubts about that?

24 A No.

25 Q And you told Mr. Engel also that you went to the

1 hpl4 Provitera-cross

2 Jungle Bar about a week or so that you saw Tennessee?

3 A Yes.

4 Q You have no doubts about that?

5 A --No.

6 Q And I think you further testified that a week or
7 two after that you went to the factory.

8 A Yes, or -- yes.

9 Q And that was also asked to you by Mr. Engel?

10 A Yes.

11 Q Was that the truth that you told Mr. Engel?

12 A Yes.

13 Q Was it the truth when you testified in court?

14 A Yes.

15 Q And you told the same story in court as you
16 told Mr. Engel on the last meeting you had with him?

17 A -- Yes.

18 Q Did you ever tell anybody a different story?

19 A Not that I recall.

20 Q Are you lying, were you telling lies here in
21 court yesterday and today, Mr. Provitera?

22 A No.

23 Q You recollect that you weren't telling lies,
24 is that right?

25 A Yes.

1 hp15

Provitera-cross

2 Q Would it be your testimony that you never told
3 anybody a different story about going to the Jungle Bar
4 and then the Factory?

5 A —To my recollection, no.

6 Q If I tell you you did tell somebody a different
7 story, would that refresh your recollection?

8 MR. ENGEL: I object, your Honor.

9 THE COURT: Sustained.

10 Q If I told you that Agent Nolan said that you
11 told a different story, would that refresh your recol-
12 lection?

13 MR. ENGEL: Same objection. ENGEL: SAME OBJECTION.

14 THE COURT: Sustained. THE COURT: SUSTAINED.

15 Q Did you ever tell any of the agents about
16 going to the Jungle Bar first and then a week or so later
17 going to the Factory?

18 A I may have. I don't recollect.

19 Q You don't know that either, do you?

20 By the way, Mr. Provitera, you never spoke to
21 me before a few moments ago, did you?

22 A No.

23 Q I never had an opportunity to go over these
24 questions and answers with you before, did I?

25 A No, you didn't.

1 hp16

Provitera-cross

2 Q You never told your story to me before, did you?

3 A No, I didn't.

4 Q Mr. Provitera, let me show you Government's
5 Exhibit 3579. This is the tape recording statement that
6 you gave, page 44. I ask you to read from the middle of
7 the page down.8 Mr. Provitera, does that refresh your recollection
9 as to whether or not you spoke to Agent Nolan about going
10 to the Jungle Bar and the Factory?

11 A Yes.

12 Q Does that refresh your recollection as to whether
13 or not you went to the Jungle Bar first and then the Factory
14 or the Factory first and then the Jungle Bar?15 A It refreshes my memory that that's the way I
16 told it to Nolan, yes.17 Q Which was the truth, what you told Nolan or what
18 you told Mr. Engel?

19 A No, in --

20 Q Which was the truth, Mr. Provitera?

21 A At the time --

22 Q Mr. Provitera, which was the truth?

23 MR. ENGEL: Your Honor, I object.

24 THE COURT: Let him answer the question.

25 MR. LEIGHTON: Your Honor, I would ask you to

1 hp17

Provitera-cross

2 direct him to answer the question as to which one and not
3 to give us another story.

4 MR. ENGEL: Your Honor, I would ask the question
5 be read back.

6 MR. LEIGHTON: I will withdraw the question,
7 if your Honor pleases.

8 THE COURT: All right.

9 Q Did you lie to Agent Nolan, Mr. Provitera?

10 A No, I didn't.

11 Q Were you confused?

12 A I --

13 Q Were you confused? Were you confused?

14 A I don't remember if I was in a confused state
15 at the time.

16 Q Are you in a confused state today, Mr. Provitera?

17 A I don't think so, no.

18 Q Mr. Provitera, do you remember your testimony
19 when you testified as to the first time you met Allen in
20 court yesterday? Do you remember when you said you met
21 him for the first time?

22 A Yes, I think so.

23 Q Would you tell us again, please? Where was it?

24 A In Howard Johnson's parking lot.

25 Q Was anybody there besides yourself?

1 hpl18 Provitera-cross

2 A Yes, Harry.

3 Q Do you remember what month it was?

4 I can't hear you.

5 A I didn't say anything.

6 Q You are still thinking?

7 A Yes.

8 Q Are you confused about what month it was?

9 A Not --

10 THE COURT: Let him answer one question at a
11 time.

12 Q Do you know what month it was?

13 MR. LEIGHTON: I will withdraw the other two,
14 your Honor. I am running a little ahead of schedule.

15 Q Do you know --

16 A I believe it was in April or May.

17 Q Did you testify here in court that it was in
18 June, Mr. Provitera?

19 A I don't recall if I did.

20 Q That was yesterday, right, and you don't recall?

21 When you spoke to Mr. Engel did you tell him
22 when you met Allen for the first time?

23 A Yes.

24 Q Did you tell him April, May, June? What did
25 you tell him?

1

hp19

Provitera-cross

2

A As I recall, I said May, June, the end of May, around June.

4

Q What happened to April?

5

A You recollected my memory.

6

Q I recollected --

7

A Yes.

8

Q Today on cross-examination?

9

A Yes.

10

11

Q Oh. So now you are starting to tell the truth more exactly, is that right?

12

MR. ENGEL: I object. It's argumentative.

13

THE COURT: It is. THE COURT: It is.

14

Q When was it, Mr. Provitera? When was it, Mr. Provitera?

15

A May or June.

16

Q When you testified in court here in response to Mr. Engel's questions you were very clear as to when you met Allen for the first time, weren't you?

19

A Yes.

20

Q And when you discussed the same date and time with Mr. Engel in his office you were also very clear, weren't you?

23

A I don't recall.

24

Q That only happened two or three weeks ago, is that right?

1 hp20

Provitera-cross

2 A Yes.

3 Q Did you ever tell anybody since your arrest,
4 when questioned as to Allen, this fellow who you say is
5 Warren Robinson, did you ever say, "I don't even remember
6 the first meeting, I don't even know if there was a first
7 meeting"? Do you remember saying that?

8 A No, I don't remember saying that.

9 Q Is it your testimony that you were always
10 positive about what happened the first time you met Allen?

11 A I don't understand that question.

12

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1 **tpl** **Provitera-cross**

3A 2 Q Is it your testimony that whenever you were asked
3 about that first meeting, you were positive you knew what
4 happened?

5 A ...I still don't understand.

6 Q . . . Did the agents, did Agent Nolan ever ask you
7 or did you ever tell Agent Nolan about the first time you
8 ever met Allen?

9 A Yes.

10 Q Were you positive about the events you told him?

11 A. Yes.

12 Q You are positive about that?

13 A Yes, I'm positive of meeting Allen, yes. 100-1881

14 Q Are you positive as you are sitting here now

15 that when you spoke to the agents about it your recollection
16 was positive, you weren't doubtful?

17 - - - MR. ENGEL: Objection, your Honor.

18 THE COURT: I think that has already been asked
19 and answered.

20 MR. LEIGHTON: I will withdraw it, Judge.

21 Q When you spoke to the agents when you were an
22 informant, you told them about this first meeting that
23 you allegedly had with Allen. is that right?

24 A Yes.

Q Do you remember which occasion that was?

A No, I don't.

1 tp2

Provitera-cross

2 Q Was it the first time you met the agents?

3 A I don't remember which occasion it was.

4 Q Was it the second time?

5 A I don't remember which occasion it was.

6 Q Was it all five times?

7 A It may have been. I don't recall.

8 Q It may not have been?

9 A Right.

10 Q It could have been only the last time when it was
11 recorded, is that right?

12 A It could have been only --

13 Q Only the last time that you mentioned it?

14 A Yes, it could have.

15 Q The last time that you spoke to the agents and
16 they recorded your conversation, it is your testimony that
17 you told the agents about this first meeting with a person
18 named Allen who you said was Warren Robinson?19 MR. ENGEL: I object, your Honor. That is not
20 his testimony. He said it could have been.

21 THE COURT: Read it back.

22 (Record read.)

23 MR. LEIGHTON: That is a good question.

24 THE COURT: All right, I will let it go.

25 Q Did you tell the agents about that alleged

1 tp3 Provitera-cross

2 meeting?

3 A Yes.

4 Q And as you sit here now, if you close your eyes,
5 do you have an independent recollection of telling this fact
6 to the agent?

7 A No, I don't.

8 Q Did you tell it to the agent?

9 A Yes.

10 Q And when you told it to the agent, did you tell
11 him you were positive about the meeting?

12 A I don't remember if I told him that I was --

13 Q Tell us what you told him. It is what you told him.

14 A I don't remember using those words, I'm positive
15 about the meeting. I told him of the meeting.

16 Q Tell us what you remember telling him.

17 A I told him of the meeting to the best of my
18 recollection.

19 Q Tell us what you told him.

20 A This is the first meeting?

21 Q Yes.

22 A That I went to Howard Johnson's and I met Harry
23 and Harry introduced me to Allen, I gave Allen the package,
24 I was introduced and Harry told me that I would be deliver-
25 ing to him at that time, and then I left.

1 tp4

Provitera-cross

2 Q You are sure that is what you told the agents?

3 A Yes.

4 Q Let me show you page 52 of Government's Exhibit
5 3579, in the middle of the page and on down.

6 You read the statement, Mr. Provitera?

7 A Yes.

8 Q Did you tell Agent Nolan you really don't recall
9 the meeting?

10 A Yes.

11 Q Were you confused then?

12 A I don't recall if I was confused.

13 Q Are you confused now? ~~Are you confused now?~~14 A No, I'm not confused. ~~No, I'm not confused.~~

15 Q You are not confused?

16 MR. LEIGHTON: All right, I have no further
17 questions of this witness.

18 THE COURT: All right, Mr. Sunden.

19 CROSS EXAMINATION

20 BY MR. SUNDEN:

21 Q Mr. Provitera, my name is Gary R. Sunden and I
22 represent Mr. Alonzo, the gentleman seated on your far right
23 over there.24 May I ask you, regarding the testimony that you
25 gave on direct testimony, did you yourself make any notes,

1 tp5

Provitera-cross

2 handwritten notes of any kind about those incidents you
3 testified to?

4 A No, I don't remember doing that.

5 Q You testified to the fact that there was a time
6 when you saw Mr. Alonzo at an apartment on University
7 Avenue in the Bronx, is that correct?

8 A Yes.

9 Q And is it a correct statement to say that that
10 is prior to this indictment or prior to here in court that
11 that is the only time that you saw Mr. Alonzo?

12 A To my recollection, yes.

13 Q There came a time when you yourself were debriefed
14 by Agent Nolan or some other representatives of the Federal
15 Government, is that correct?

16 A Yes.

17 Q And were you ever present when Harry Pannirello
18 was debriefed?

19 A Yes.

20 Q And were you present at any time when Harry
21 Pannirello was debriefed and there was a tape recorder
22 present?

23 A No.

24 Q You stated you sent to that apartment on
25 University Avenue several times, but that on only one of

1 tp6 Provitera-cross

2 those occasions was, according to your testimony, Mr. Alonzo
3 present, is that correct?

4 A Yes.

5 Q Here in court I believe you identified Mr. Alonzo
6 by another name, is that correct, sir?

7 A Yes.

8 Q And when you were introduced to Mr. Alonzo,
9 were you introduced to him as Butch?

10 A Yes.

11 Q You stated, and I believe it is your testimony,
12 that you were not aware of the fact that his true name is
13 William Alonzo, is that correct? Alonzo, is that because:

14 A At that time, no. At that time, no.

15 Q You are now aware of that fact?

16 A Yes.

17 Q But when you were introduced to him, you were
18 introduced to him as Butch, is that a fair statement?

19 A Yes.

20 Q You were also introduced to another person and
21 you became aware that that person's name was Hattie Ware,
22 is that correct?

23 A Yes.

24 Q And it was represented to you that Mr. Alonzo
25 was Hattie Ware's brother, is that correct?

1 tp7

Provitera-cross

2 A Yes.

3 Q And when you were introduced to Mr. Alonzo, is
4 it a fair statement to say that you were introduced to him
5 merely as Butch and that you assumed that his last name was
6 the same as the co-defendant Hattie Ware's?

7 MR. ENGEL: I object, your Honor.

8 Mr. Provitera did not testify and has not
9 testified that he was introduced as Butch, that he,
10 Provitera, was introduced as Butch.

11 THE COURT: All right.

12 MR. SUNDEN: I didn't understand Mr. Engel's
13 objection. objection. objection.14 THE COURT: Let me see if I can unscramble it,
15 all right?16 MR. SUNDEN: May I proceed, Judge? Perhaps I
17 can put the questions in some way that would not be --

18 THE COURT: Go ahead.

19 The thing is, just make sure the pronouns are
20 in the right place. I didn't pick it up until it was pointed
21 out.22 Q Was it merely an assumption on your part that the
23 last name of Mr. Alonzo was Ware?

24 A Yes.

25 Q To the best of your recollection, what would you

1 tp8 Provitera-cross

2 fix right here in court now under oath, what would you fix
3 as the date of that meeting where you claim Mr. Alonzo
4 was present at that apartment in the Bronx?

5 A Late -- late -- not late. It was January or
6 February?

7 Q Of what year?

8 A '72.

9 Q Incidentally, how long was that meeting altogether?
10 How long were you in that apartment that day?

11 A All told, probably 15 to 20 minutes or so.

12 Q You don't know the exact date of that meeting,
13 is that a fair statement? is that a fair statement? is that a fair statement?

14 A Yes. A Yes.

15 Q And you are not even a hundred per cent sure of
16 the exact month, is that a fair statement?

17 A Yes.

18 Q When you went into that apartment, you were
19 carrying a bag of heroin, is that correct?

20 A Yes.

21 Q And at some later point that bag of heroin was
22 handed to Harry Pannirello, is that correct?

23 A Yes.

24 Q And you state that there came a time when you
25 proceeded into a bedroom in that apartment, is that correct?

A Yes.

2 Q Did you notice how many bedrooms there were
3 in that apartment?

4 A Two.

5 Q Before you entered the bedroom did you have
6 to walk down a hallway, a short hallway, or some corridor,
7 if you recall?

8 A No, not really. It was off the living
9 room.

10 Q And as you were standing in the living room
11 could you see the bedroom or was the bedroom at the
12 side that you had to walk up and then see the bedroom en-
13 trance?

14 A I don't recall.

15 Q Incidentally, did you notice how many beds,
16 if any, were in that bedroom?

17 A I don't recall.

18 Q Was it one, if you recall?

19 A I don't recall.

20 Q And did you notice if there were any toys or
21 games in that bedroom?

22 A I don't recall that.

23 Q You stated, I believe, that to date you
24 have served about five days in jail on all of your
25 criminal involvement so far in this case, is that correct?

2 A Yes.

3 Q And it has been pointed out previously that
4 you are aware of the fact that you have committed many
5 violations of narcotics laws, but you now have pending
6 against you two charges to which you pleaded guilty, is
7 that correct?

8 A Yes.

9 Q And you are conscious of the fact that you
10 perhaps could be prosecuted for income tax violations and
11 other state court violations, but you are hoping that
12 you are not going to be, is that correct?

13 A Yes. Yes

14 Q Basically, would it be a fair statement to
15 say that you made a conscious decision that you wanted
16 to make some sort of deal with the government in the
17 hopes that you would avoid going to jail any more
18 in this case, is that correct?

19 A Yes.

20 Q And once you made that deal you saw down and
21 then discussed with agents and different assistant U. S.
22 attorneys and told them your version of the story,
23 is that correct?

24 A In effect, yes.

25 Q And you spoke with Mr. Engel and Mr. Phillips,

2 among others, and different agents, is that correct?

3 A Yes.

4 Q Prior to coming into court here were you
5 shown pictures of William Alonzo?

6 A I don't recall. I recall being shown
7 pictures. I don't recall specifically being shown pic-
8 tures of William Alonzo.

9 Q Let me get this straight.

10 There is no doubt in your mind that you
11 were shown pictures of different defendants and different
12 people allegedly involved in this case, is that correct?

13 A That's correct. That's correct

14 Q But is it your testimony that you may have been
15 shown pictures of Mr. Alonzo, but you are not sure? Is
16 that your testimony?

17 A -- Yes.

18 Q I believe you also testified that with regard
19 to a party who you identified as Allen, you saw that
20 party at least on four different occasions, is that
21 correct?

22 A -- Say that again, please.

23 Q I believe your testimony was that with regard
24 to a party who you knew as Allen, that you saw that
25 person on at least four different occasions?

2 A Yes.

3 Q And, of course, it was your testimony when
4 you were asked, "Do you see Butch Ware here in court?"
5 there is no dispute about the fact that you stood up
6 and you pointed out this person who you knew as Allen,
7 is that correct?

8 A Yes.

9 Q Directing your attention back to this time you
10 claim that you were in a bedroom in an apartment on
11 University Avenue, you state that there were four people
12 in the bedroom, is that correct?

13 A Yes.

14 Q And those people, according to your story,
15 were yourself and Harry and Mr. Alonzo and Basil, is
16 that correct?

17 A --Yes.

18 Q And according to your story, at one point you
19 had the heroin and at one point Harry had the heroin in
20 his hand, is that correct?

21 A Yes.

22 Q --And then the heroin was handed to someone
23 else, is that correct?

24 A Yes.

25 Q And will you tell the jury to whom the heroin

2 was handed?

3 A Basil.

4 Q Did you ever at any time in that bedroom see
5 that heroin in the hands of Mr. Alonzo?

6 A No, I didn't.

7 Q Did you ever receive even a single dime of
8 money for narcotics from Mr. Alonzo?

9 A No, I didn't.

10 Q You stated, I believe, that you wouldn't lie
11 if it was under oath, is that correct?

12 A Yes.

13 Q And you took an oath before you came in here
14 to testify, is that right? Is that right?

15 A Yes.

16 Q And you understood that oath to be not only to
17 tell the truth, but the whole truth, is that right?

18 A Yes.

19 Q Did you take a similar oath prior to testify-
20 ing before the grand jury in October of 1973?

21 A I think so, yes.

22 Q Do you recall testifying before the grand
23 jury in October of 1973?

24 A Vaguely, yes.

25 Q And, of course, when you were testifying,

2 you were testifying about this case, isn't that right?

3 A Yes.

4 Q And were you asked a question under oath
5 before the grand jury:

6 "Did you deliver narcotics to anybody in the
7 Bronx"?

8 Were you asked that question?

9 A I don't recall it specifically, but if you
10 say I did --

11 Q Mr. Provitera, let me show you a copy of your
12 grand jury testimony and perhaps that will refresh
13 your recollection as to what that testimony was.

14 A Yes.

15 Q Does this transcript of your grand jury testimony
16 refresh your recollection as to what your testimony was?

17 A -- Yes.

18 Q And you concede the truth of this transcript,
19 is that right?

20 A Yes.

21 Q And you conceded the fact that you were under
22 oath to tell the truth at the grand jury?

23 A Yes.

24 Q And you conceded the fact that the oath in-
25 cluded the obligation to tell the whole truth, is that

1 gta

Provitera-cross

3239

2 right?

3 A Yes.

4 Q And do you now recall being asked the question:
5 "Did you deliver narcotics to anybody in the
6 Bronx"?

7 Were you asked that question?

8 A Yes.

9 Q And do you recall answering:
10 "Yes, I did"?

11 A Yes.

12 Q And do you recall being asked the further
13 question:

14 "To whom did you deliver it in the Bronx"?

15 Do you recall being asked that question?

16 A Yes.

17 Q And you named three people to whom you delivered
18 in the Bronx, is that right?

19 A Yes.

20 Q Did you name Butch Ware as one of those
21 people to whom you delivered narcotics in the Bronx
22 testifying under oath before that grand jury?

23 A No, I didn't.

24 Q Did you name William Alonzo?

25 A No, I did not.

1 gta

Provitera-cross

3240

2 Q You understood that you were under oath to tell
3 the whole truth, is that correct?

4 A Yes.

5 Q As to that meeting in the Bronx, incidentally,
6 you don't have any notes or any pictures or any tapes
7 or anything to prove your allegation that Mr. Alonzo was
8 in that bedroom with you, do you?

9 A No.

10 Q It is just your word here, is that right?

11 A Yes.

12 MR. SUNDEN: I have no further questions.

13 Thank you.

14 THE COURT: All right. Does anybody
15 else wish to inquire?

16 It is time for the afternoon break.

17 Marshal, take the jury out.

18 (The jury left the courtroom.)

19 THE COURT: I assume you are not going to
20 have redirect. Or are you?

21 MR. ENGEL: Four questions, your Honor.

22 THE COURT: Four questions?

23 MR. ENGEL: That's right, your Honor.

24 THE COURT: All right. We will take 10
25 minutes.

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2 Mr. Provitera, go back to the witness room.

3 Take 10 minutes, everyone.

4 (Recess.)

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T4

(In the robing room.)

3 THE COURT: This is a robing room conference with
4 Mr. Curran and Mr. Phillips present, Mr. Lopez.

5 Your name is?

6 MRS. PATALANO: Mrs. Patalano.

7 THE COURT: I understand, Mrs. Patalano, that
8 you have been represented, when you need representation,
9 by Mr. Lopez, who is here.

10 MRS. PATALANO: Pardon me.

11 THE COURT: Your lawyer is Mr. Lopez.

12 MRS. PATALANO: Right.

13 THE COURT: Who wants to take it from here? to take

14 MR. LOPEZ: I make the representation -- the r

15 MRS. PATALANO: May I sit down?

16 THE COURT: Sure, go ahead. I understand also
17 that you have been subpoenaed to testify here.

18 MRS. PATALANO: Yes, I have.

19 THE COURT: All right. Go ahead.

20 MR. LOPEZ: Your Honor, after consultation with
21 me Mrs. Patalano has asked that I advise the Court that
22 in the event that she is asked to testify she will invoke
23 her Fifth Amendment privileges and her constitutional
24 rights and decline to testify.

25 MR. PHILLIPS: Your Honor, it's the government's

1 hp2

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2 intention to ask the Court to confer use immunity upon
3 Mrs. Patalano pursuant to Title 18, United States Code,
4 Section 6001 and 6002.

5 We have requested the Department of Justice
6 to authorize our request to your Honor and I understand
7 it has informally been granted and that Mr. Peterson
8 is going to send us a teletype to that effect this after-
9 noon.

10 THE COURT: Mr. Lopez, I believe that there is
11 something in the statute which says the U.S. Attorney's
12 office should have the teletype in response from the
13 Attorney General in hand. Are you willing to do it informal-
14 ly?

15 MR. LOPEZ: Yes, I am willing to do it informally,
16 your Honor.

17 THE COURT: All right. Mrs. Patalano, do you
18 understand what has been going on here?

19 MRS. PATALANO: Not really. I am just getting
20 the drift of something here, but I prefer you to explain
21 it to me.

22 THE COURT: Sure. The Fifth Amendment refusal
23 to testify means that you don't want to answer a question
24 because the government can use that answer against you.

25 What we have in effect today is the government

1 hp3

2 requesting that you be granted immunity so that they can
3 never use the answers that you give against you. So in
4 effect, therefore, you would end up being unable to claim
5 the Fifth Amendment because, in effect, they say that they
6 are not going to prosecute you and, therefore, you cannot
7 incriminate yourself by these answers.

8 Do you understand what I have said up to this
9 point?

10 MRS. PATALANO: I understand, yes.

11 THE COURT: Basically, the government has asked
12 me to order you to testify.

13 MRS. PATALANO: To order me to testify?

14 THE COURT: That's right. By granting their
15 request for that order, in effect, you will receive the use
16 immunity, even though there is perhaps a technical problem
17 in that the authorization is not in hand. However, your
18 counsel, Mr. Lopez, has indicated that he is not going to
19 insist upon that technical thing, and if I order it, then
20 you will have the immunity.

21 Rather than take this up outside afterwards
22 I will enter the order now. I don't believe I have to have
23 a formal document.

24 You understand? ---

25 MRS. PATALANO: Yes. In other words, you are

1 hp4

2 taking the responsibility of giving me the immunity without
3 the paper in hand. Is that what you are saying?

4 THE COURT: That's what I am saying. All
5 right?

6 MRS. PATALANO: All right.

7 THE COURT: Do you want a few moments to chat
8 with Mr. Lopez now to make sure you do understand?

9 MR. CURRAN: Your Honor, if I may, before that,
10 would your Honor advise the witness specifically that she
11 is not immune from perjury or contempt charges.

12 MRS. PATALANO: He just did say that.

13 MR. CURRAN: You said it in passing, but you
14 didn't use those words, sir. use those words, sir.

15 THE COURT: Do you know what perjury is?

16 MRS. PATALANO: Yes.

17 THE COURT: You lie.

18 MRS. PATALANO: Yes, I understand.

19 THE COURT: If you lie they can prosecute.

20 MRS. PATALANO: I understand that, yes.

21 THE COURT: Of course, if you are in contempt,
22 that is, if you refuse to answer the questions which are
23 put to you or --

24 MRS. PATALANO: In other words, I have to answer
25 every question that I am asked.

1 hp5

2 MR. LOPEZ: Truthfully.

3 MRS. PATALANO: Is that right?

4 THE COURT: Truthfully.

5 MRS. PATALANO: Well, naturally.

6 THE COURT: That's basically it.

7 MRS. PATALANO: All right, fine.

8 THE COURT: If you don't you can be in contempt
9 and if you are not truthful you can be prosecuted for perjury.

10 MRS. PATALANO: Right.

11 MR. LOPEZ: Your Honor, I would like to indicate,
12 as you know, I represent Joseph Di Napoli, and I have
13 consulted with him on my legal representation of Mrs. Patalano and he has authorized me to represent her.
14 He will, if your Honor requests, personally place his assent
15 on the record at any time that you request.

16 THE COURT: Why don't we do it right now.

17 MR. PHILLIPS: Fine, your Honor. May Mrs.
18 Patalano be excused to go back to the witness room while
19 Mr. Di Napoli comes in, your Honor?

20 THE COURT: Yes.

21 MR. LOPEZ: You can go back to the witness room.

22 THE COURT: Mr. Lopez will be down to talk to
23 you. All right?

24 MRS. PATALANO: Thank you.

1 hp6

2 (Mrs. Patalano left the robing room.)

3 (Mr. Di Napoli entered the robing room.)

4 THE COURT: The record should reflect Mr. Di
5 Napoli has come in.6 Mr. Di Napoli, while we have been inside the
7 robing room a Mrs. Patalano has been present. Mr. Lopez
8 has represented to me that he has represented Mrs. Patalano
9 in the past and also you. He is representing you presently.10 Do you object to him representing Mrs. Patalano
11 presently?

12 MR. DI NAPOLI: No, sir.

13 THE COURT: You want to go any further than that?

14 MR. LOPEZ: No. I think I have explained to Mr.
15 Di Napoli that I am representing her here at these pro-
16 ceedings, that I may have to ask her questions, that the
17 government is asking her questions, and he has no objection,
18 as a matter of fact, encouraged that I be her attorney for
19 the purpose of these proceedings also.

20 THE COURT: All right.

21 MR. LOPEZ: Is that right?

22 MR. DI NAPOLI: Yes, sir.

23 THE COURT: All right, fine.

24 MR. LOPEZ: Thank you very much, your Honor.

25 (In open court; jury not present.)

2 THE COURT: Gentlemen, I did not bring back the
3 jury yet because there is one thing I want to take up with
4 you.

5 I have permitted the widest latitude on cross-
6 examination that is possible. However, I do note that
7 there has been a certain amount of repetition which really
8 is unnecessary. I would appreciate it, if possible, in
9 the future, if you could avoid that kind of repetition.

10 All right. Bring back the jury, please.

11 I should note also that avoiding repetition on
12 cross-examination can really be a help to you, because
13 if a witness is asked a question a second time what might
14 happen is you might end up getting him a chance to explain
15 the first answer he gave. Think about it.

16 MRS. ROSNER: Your Honor, I will be required to
17 be absent for a few moments at 4.00 p.m. to be at a con-
18 ference before Judge Griesa and Mr. Fisher will cover for
19 me.

20 MR. POLLAK: As I advised the Court, I have a
21 similar problem at 4.00 p.m. before Judge Motley. Mr.
22 Siegel will be covering for me at that time.

23 THE COURT: Fine.

24 MR. RICHMAN: If the Court pleases, before the
25 jury returns could I have a side bar with Mr. Lopez and

2 Mr. Curran?

3 THE COURT: Sure.

4 (At the side bar.)

5 MR. RICHMAN: Judge, I wanted to make a record
6 It's understanding that shortly hereafter Mrs.
7 Patalano will be testifying with reference to the million
8 dollars. In reading the 3500 material it is obvious that
9 my name may come up either during the direct or the cross-
10 examination.

11 I want to inform your Honor that if it does I
12 would consider it a very, very bad opportunity or at least
13 cast very bad aspersions upon my client, Ben Tolopka.

14 I would respectfully state if my name is even so
15 much as mentioned in this case I would move for a mistrial
16 on behalf of Benjamin Tolopka only.

17 MR. LOPEZ: Your Honor, may I represent that I
18 have had some conversations with Mr. Phillips and I don't
19 think at this moment, at least, without preventing or
20 precluding the government from proceeding further, that
21 any mention has been indicated to me that they intend to
22 introduce anything about the million dollars at this point.

23 As far as cross-examination is concerned, and
24 I am sure -- I sound like the government -- as far as
25 direct testimony is concerned, Mr. Richman's name is not

2 to be mentioned and will not be mentioned.

3 THE COURT: I should add the government has not
4 talked to the witness up until two minutes ago.

5 MR. LOPEZ: That's right.

6 MR. RICHMAN: I assume that --

7 THE COURT: Mr. Lopez has.

8 MR. LOPEZ: Right.

9 THE COURT: That is the reason he is saying what
10 he is saying. -

11 MR. RICHMAN: All right, as long as he knows.

12 MR. CURRAN: Your Honor, we certainly don't intend
13 to elicit that testimony one I suppose what you can direct
14 but I guess at some point will become cross-examination. -

15 I don't concede, your Honor, that if it comes out
16 in response to a question that we agree in any way with
17 Mr. Richman's point. -

18 MR. LOPEZ: Fine.

19 THE COURT: All right. -

20 - (In open court; jury present.)

21 THE COURT: All right, Mr. Engel.

22 -

23 -

24 -

25 -

2 P A S Q U A L E P R O V I T E R A, resumed.

3 REDIRECT EXAMINATION

4 BY MR. ENGEL:

5 Q Mr. Provitera, during your cross-examination
6 Mr. Panzer asked you about certain photos that were shown
7 to you. Do you recall that?

8 A Yes.

9 Q I would like to show you several photographs and
10 ask you if you can identify people in them.11 Q I show you Government's Exhibit 67 in evidence
12 and ask you whether you can identify the person shown in
13 that picture.

14 MR. SUNDEN: I object.

15 THE COURT: No, I will permit it.

16 A Yes. That's Basil.

17 Q I show you Government's Exhibit 68 in evidence
18 and ask you whether you can identify the people in that
19 picture.20 A That's Basil and that looks like the woman that
21 was in the car with him.22 Q That was the woman that was in the car when you
23 delivered narcotics off Rosedale Avenue?

24 A Yes.

25 Q I show you Government's Exhibit 72 in evidence

2 and ask you whether you can identify the people in that
3 picture.

4 A Yes. That's Basil and the woman again.

5 Q The same woman that was in the car on Rosedale
6 Avenue?

7 A Yes.

8 Q Mr. Panzer also asked you about a trip you took
9 to Canada. Can you tell us what you were going to Canada
10 for?

11 A I drove my son up to camp.

12 Q Mr. Leighton asked you whether when I asked you
13 yesterday in your direct testimony to identify the defendant
14 Butch Ware you pointed to Warren Robinson or Allen. Do you
15 remember that?

16 A Yes.

17 Q And after you pointed to Warren Robinson, Allen,
18 did you then immediately turn to your right and identify
19 the defendant William Alonzo?

20 MR. LEIGHTON: I object to the form of the
21 question.

22 THE COURT: I will sustain it.

23 Q Did you thereafter turn to your right and identify
24 the defendant Butch Ware?

25 MR. SUNDEN: Objection.

2 THE COURT: I will sustain it.

3 Q You testified both ondirect and cross-examination,
4 Mr. Provitera, that you knew Warren Robinson or Allen in
5 1972. Do you remember that?

6 A In 1972, yes. --

7 Q When you knew Warren Robinson or Allen did he
8 have a beard?

9 A No, he did not.

10 Q And your grand jury testimony which was referred
11 to by Mr. Sunden, do you remember testifying about that just
12 a few moments ago?

13 A Yes.

A Yes.

14 Q You testified in the grand jury that you delivered
15 narcotics to Hattie Ware and to Basil before the grand jury?

16 A Yes.

17 Q And did you testify that you delivered narcotics
18 to Hattie Ware who then delivered them to Al Greene?

19 MR. SUNDEN: Objection, your Honor.

20 THE COURT: No, I will permit it.

21 A Yes, I did.

22 Q Mr. Pollak asked you extensively about promises
23 or statements made to you by Agent Nolan and Agent Moore
24 and others and myself and Mr. Phillips.

25 Were any promises made to you by Agent Nolan,

2 Agent Moore, Mr. Phillips, myself or any other government
3 representative that you would not receive a prison
4 sentence in New Jersey?

5 A No.

6 MR. ENGEL: No further questions.

7 THE COURT: Does anybody else wish to inquire?

8 All right. Mr. Provitera, step down.

9 (Witness excused.)

10 THE COURT: All right, Mr. Phillips.

11 MR. PHILLIPS: The government calls Gene
12 Patalano.

13 G E N E V I E V E P A T A L A N O, called as a witness
14 on behalf of the government, being first duly
15 sworn, testified as follows:

16 MR. PHILLIPS: May I proceed, your Honor?

17 THE COURT: Yes.

18 DIRECT EXAMINATION

19 BY MR. PHILLIPS:

20 Q Is it Miss or Mrs. Patalano?

21 A Mrs.

22 Q Could you tell us what your marital status is
23 at the present time?

24 A I am the common law wife of Joseph Di Napoli.

25 Q Are you presently married to somebody else?

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2 A No, I am not. I am divorced.

3 Q You are divorced from somebody else?

4 A Yes.

3 5 Q By the way, have you spoken to me before now?

6 A Pardon me?

7 Q Have you spoken to me before now?

8 A Directly? No.

9 Q Where are you living at the present time?

10 A I am living in Scarsdale.

11 Q Where in Scarsdale?

12 A 1 Bloomingdale Drive.

13 Q Is that a house?

14 A Yes, it is.

15 Q Do you own the house?

16 A Yes, I do.

17 Q Did you ever live at 1908 Bronxdale Avenue in
18 the Bronx?

19 A Yes, I have.

20 Q When did you live there?

21 A October of '69 to March of '72.

22 Q You left there in March of 1972?

23 A Yes, I did.

24 Q During that period of time did Joseph Di Napoli
25 live with you?

2 A Yes, he did.

3 Q During what period of time?

4 A October to March.

5 Q October of what year?

6 A October of '69 to March of '72.

7 Q Do you see Mr. Di Napoli in the courtroom?

8 A Yes, I do.

9 Q Would you point him out, please?

10 MR. LOPEZ: Stipulated.

11 THE COURT: It's stipulated. There is no need to
12 go into it.13 Q At that time were you separated from your husband,
14 Mr. Patalano? Mr. Patalano? Mr. Patalano?

15 MR. LOPEZ: Objection.

16 THE COURT: I don't know where this is going.

17 MR. LOPEZ: Objection, your Honor.

18 THE COURT: Yes, I will sustain it.

19

20

21

22

23

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2 Q Do you know a person by the name of Frank
3 Pugliese?

4 A Well, I do now.

5 Q And during the period of time that you were
6 living at 1908 Bronxdale Avenue?

7 A Not as Frank Pugliese, no.

8 Q What did you know him by?

9 A Butch.

10 Q Did you see him there from time to time?

11 A He did some work on my house.

12 Q Do you see him in the courtroom?

13 A Yes.

14 Q Would you point him out, please?

15 A Right there (indicating).

16 Q The gentleman that just stood up?

17 A Yes.

18 Q Incidentally, does Mr. Lopez represent you in
19 any capacity?

20 A Right now I think he is.

21 MR. FISHER: Objection, if your Honor
22 please.

23 THE COURT: I will sustain it.

24 MR. PHILLIPS: May this be marked as
25 Government's Exhibit 81 for identification.

2 (Government's Exhibit 81 was marked for
3 identification.)

xx 4 Q I show you what has been marked as Govern-
5 ment's Exhibit 81 for identification, a photograph, Mrs.
6 Patalano.

7 Could you tell us whether or not you recognize
8 what is in that photograph?

9 A Yes, I do. My home on 1908 Bronxdale Avenue.

10 Q -- Which is it in that particular photograph?

11 A It's the semidetached home to the left.

12 Q The one on the far left?

13 A Yes. Yes.

14 Q I show you what has been marked Government's
15 Exhibit 78 in evidence.

16 Does that diagram fairly depict the first
17 floor of your former house at 1908 Bronxdale Avenue?

18 A I don't understand what you are trying to say.

19 Q Would you look at that diagram?

20 A -- Yes, I am looking at it.

21 Q Can you understand the writing on the diagram
22 where it says "Living Room," etc.?

23 A It says "Living Room" and it says "Door" and
24 it says "Staircase."

25 Q And is there an indication on the diagram where

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2 the entrance to the house is?

3 A Is this where the staircase is? Is that
4 supposedly the entrance or where the doorway is?

5 Q Where is the doorway, the entrance to the
6 house, in relation to the staircase on the second floor?

7 MR. LOPEZ: Your Honor, I am going to object
8 to this. Objection.

9 THE COURT: All right, I am going to permit
10 it.

11 Mrs. Patalano, can you read that?

12 THE WITNESS: Well, your Honor, from the
13 way I see it here it is not correct, the way I see it.

14 THE COURT: All right.

15 Q Where is the doorway in relation to the stair-
16 case?

17 A Well, if I were to draw this diagram -- you
18 see, there is one part on this diagram that throws me
19 completely off.

20 Q Which part is that?

21 A You have here "Doorway," then you have "Dining
22 Room," "Living Room," nothing here, just a stairwell here.

23 Now, this wall on the left to the doorway --

24 Q Yes?

25 A -- to me is incorrect.

2 Q In what way?

3 A I don't believe the wall is that long from the
4 doorway to the living room.

5 Q Is there a sofa in front of that wall?

6 A No. The layout of the sofa and the tables
7 are wrong.

8 Q In what way?

9 A You have here --

10 MR. LOPEZ: I am going to object to this unless
11 we have a time period. When are we talking about?
12 We know that the durniture moves around.

13 THE COURT: Mrs. Patalano, did you move your
14 furniture around when you were --

15 THE WITNESS: Well, your Honor, it was
16 almost impossible to move it around. I did move it around
17 on occasions, but basically it was always the same.

18 THE COURT: Is that thing that is marked as
19 "Sofa," is that one piece?

20 THE WITNESS: No. This, to me, looks like
21 a sectional sofa, which I did not have.

22 THE COURT: All right.

23 THE WITNESS: At any time.

24 Q Was the door to the house approximately where
25 it is marked "Door" here?

2 A The living room was to the left of the doorway, right.

4 Q And was there a stairway to the right of the doorway to the second floor?

6 A Right.

7 Q And was the dining room adjacent to the living room?

9 A Yes.

10 Q And was there a sofa at this end, the southern end, of the house against the wall?

12 A Where the doorway is?

13 Q Yes, the same side of the house. same side of the

14 A No. NO

15 Q There was no sofa along there at any time?

16 A No, not that I see this. There is no sofa on this wall at all, no end table.

18 Q At any time during the time that you were living there?

20 A On the wall to where the doorway is into the living room there was no sofa.

22 Q Was there any sofa along this far left wall?

23 A Can I tell you where the sofa was?

24 Q Sure.

25 A Okay. The sofa started from here, one,

2 from here.

3 Q Where it says "Table"?

4 A On this wall here (indicating).

5 Q There was a sofa along this wall here?

6 A No -- well, yes, right on this wall here.

7 Then it went -- wait a minute. This diagram has me con-
8 fused.9 Q No. If you would just answer my question,
10 Mrs. Patalano. Was there a sofa or not at any time
11 you were living there along this wall on the far left
12 of the diagram?

13 A Oh, yes, along the wall here, right.

14 Q Was there at any time that you were living there
15 a sofa on this wall at the bottom of the diagram?

16 A This here line represents a wall, this line here?

17 Q Please just answer my question.

18 THE COURT: She has to understand it.

19 A I got to understand the diagram.

20 Q Let me ask you, was there a wall right after you
21 walked into the door?

22 A Yes, there was a small wall there.

23 Q Then you go into the living room if you go
24 to the left?

25 A You go to the left you go into the living room,

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2 correct.

3 Q Do you understand what this line here repre-
4 sents?

5 A Right. This represents a wall, a table,
6 a sofa and then a sofa.

7 The way the layout is here it is incorrect.

8 Q Which way is it incorrect or how is it in-
9 correct?

10 A It is incorrect this way:

11 There was no table at this end of the room,
12 I had two sofas in the living room.

13 Q Right.

14 A There was no sectional in my home at all.

15 Q In other words, there was no continuous sofa
16 that went around the corner?

17 A No.

18 Q Was there a sofa against the wall that is
19 represented by the bottom line?

20 A There was a sofa, yes.

21 Q And was there a sofa against the wall that is
22 represented by the line to the left?

23 A Yes.

24 Q And how close together did those sofas come in
25 the corner?

2 A They were separated by a table.

3 Q How big was the table?

4 A The table was quite big.

5 Q About how big? Was it bigger than the
6 table before which you are sitting now?

7 A Yes.

8 Q How big was it?

9 A I would say it was about this much bigger and
10 it had a very high back (indicating). It had two --

11 Q This much bigger meaning about six inches big-
12 ger?

13 A I don't know how to measure six inches, but I
14 would say it was this much bigger and lower (indicating).

15 Q In front of either of these two sofas was there
16 a coffee table or any type of a table?

17 A The coffee table is laid out incorrectly.

18 Q How should the coffee table be laid out?

19 A It would have been reversed. The longest
20 part would be this way (indicating).

21 Q Perhaps you could draw that for me with a
22 red pen.

23 A I would be glad to do that for you.

24 Q Would you take this ballpoint pen of --

25 A Can I have another piece of paper, please?

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2 Q I was just going to ask you, if you could, Mrs.
3 Patalano, to draw over this diagram how the table should
4 be.

5 A Here is the doorway coming into the house, here
6 is about, oh, maybe a three-foot wall. I don't know.
7 Okay?

8 Now, this sofa started here. There was no
9 room for a coffee table at that point.

10 Q Where you just made that line, you mean?

11 A Where I made this line, right. It came this
12 way --

13 THE COURT: Hold on just a second.

14 Do you have a red pen, Mr. Clerk?

15 Let us make it in contrasting colors.

16 Indicate with the red pen where the sofa was.

17 THE WITNESS: You see, your Honor, there was
18 a wall here about three foot, approximately. I really
19 don't know.

20 THE COURT: Go ahead.

21 THE WITNESS: Between the wall and the sofa
22 there wasn't enough room to put an end table.

23 THE COURT: I see. So your sofa began
24 shortly close to the wall?

25 THE WITNESS: Close to the wall, but not

2 directly on the wall.

3 THE COURT: All right.

4 THE WITNESS: It came along this way, which
5 I think the sofa was about seven feet.

6 THE COURT: All right.

7 THE WITNESS: To here (indicating). Then
8 there was a table here. Right?

9 THE COURT: Yes.

10 THE WITNESS: Then alongside the table --
11 you see, the table fit right into a corner. It was a
12 corner table.

13 Then another sofa started here (indicating).

14 Nowk there was an arm on this side of the
15 sofa and an arm here.

16 THE COURT: All right. So there was an arm
17 on both ends of the two sofas, except where the table was
18 in the middle?

19 THE WITNESS: Right, exactly. The table
20 right in there.

21 Now, where they have the coffee table --

22 THE COURT: You draw in red where you think
23 the coffee table should be.

24 THE WITNESS: I know where it was.

25 THE COURT: I know. I am not denying it.

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2 Go ahead, you draw it. It's your house.

3 THE WITNESS: One couch was about seven foot
4 and the other about four foot.

5 THE COURT: All right.

6 THE WITNESS: The coffee table was roughly,
7 I would say, around four foot. It was this way (in-
8 dicating). It was long ways.

9 THE COURT: So it sat in front of the long
10 sofa?

11 THE WITNESS: Right.

12 THE COURT: All right.

13 MR. PHILLIPS: Your Honor, I have no
14 further questions.

15 I would like to pass Government's Exhibit 78
16 in evidence to the jury, if I may.

17 THE COURT: Hold on for a second.

18 I think defense counsel ought to see it.
19 It is chanbed.

20 MR. PHILLIPS: Your Honor, I do have one
21 or two more questions I would like to ask.

22 (Pause.)

23 MR. PHILLIPS: Before that is passed to the
24 jury, I wonder if I could ask the other questions I
25 wanted to, your Honor.

2 THE COURT: Yes, go ahead.

3 Q Was the furniture essentially the same during
4 the entire time, that is in the same position, during
5 the entire time that you lived there?

6 A Most of the time that I lived there, yes.

7 Q Do you know a person by the name of Vincent Papa?

8 A Yes, I've met the man.

9 Q And did you meet him at 1908 Bronxdale Avenue?

10 A Yes, I did.

11 Q Was he a good friend of Joe DiNapoli's?

12 MR. LOPEZ: Objection, your Honor.

13 THE COURT: If you know.

14 A I'm really -- I really don't know how good a
15 friend he was.

16 THE COURT: All right.

17 Q How many times did you see him at the house?

18 A I don't recall.

19 Q More than 10?

20 A I really don't recall.

21 Q How about Butch Lamone, do you know him?

22 A Yes, I do.

23 Q Do you see him in the courtroom?

24 A There he is (indicating).

25 Q The man who just stood up?

2 A Yes.

3 Q Did you see him from time to time at 1908 Bronx-
4 dale Avenue?5 A I know Butch Mamone a long time. I know Butch
6 Mamone before I knew Joseph DiNapoli.

7 Q Did you ever see him at 1908 Bronxdale Avenue?

8 A Yes, I did.

9 MR. PHILLIPS: I have no further questions,
10 your Honor.

11 I would like to pass this diagram.

12 THE COURT: All right.

13 MR. PHILLIPS: Your Honor, I will offer your
14 Government's Exhibit 81 for identification.

15 THE COURT: Show it to counsel.

16 MR. LOPEZ: I offer no objection.

17 THE COURT: Does anyone have any objection
18 to this picture of a house?

19 MR. LOPEZ: I have no objection to that.

20 photograph, your Honor. I don't think these other
21 people are interested.

22 THE COURT: There are other people.

23 MR. LOPEZ: I am sorry.

24 (Pause.)

25 THE COURT: Is there any objection?

2 MR. ELLIS: On the ground of relevance,
3 your Honor.

4 THE COURT: We will see if it doesn't become
5 relevant.

6 I will permit it in.

7 (Government's Exhibit 81 was received in
8 evidence.)

xx 9 (Pause.)

10 THE COURT: All right, Mr. Lopez.

11 MR. LOPEZ: May I?

12 THE COURT: Yes.

13 CROSS EXAMINATION

CROSS EXAMINATION

14 BY MR. LOPEZ:

15 Q Referring to 1908 Bronxdale in the Bronx,
16 was this a similar house to many houses on the block?

17 A I would say that all the houses on that street
18 were the same.

19 Q About how many houses were on that street?
20 at 1908 Bronxdale?

21 A Well, approximately five or six.

22 Q Did you ever have occasion to go inside any of
23 these houses?

24 A Yes, I did.

25 Q And were the houses inside similar in structure

2 as the house at 1908 Bronxdale?

3 A Yes. I think they were all built by the
4 same builder. I'm not sure.

5 Q I am going to talk back to about June or July,
6 1971. 1971, June or July.

7 At that time if you sat in the licing room could
8 you see the dining room?

9 A No.

10 Q Was something else built later, at a later date,
11 that you could see the view from the living room into the
12 dining room?

13 A After June or July? After June or July?

14 Q Yes. 103

15 A No.

16 Q At any time, June or July or at any time while
17 you lived at 1908 Bronxdale you could not see the
18 dining room from the living room, is that correct?

19 A Absolutely not.

20 Q Could you see the dining room at any time from
21 the moment you entered 1908 Bronxdale if you headed for
22 the living room?

23 A No.

24 Q You have been here on several days during
25 the trial testimony, is that correct?

2 A Yes.

3 Q And did you see a witness by the name of Harry
4 Pannirello testify here?

5 A Yes, I did.

6 Q And did you have an occasion to see him and
7 observe him?

8 A Yes, I did.

9 Q Have you ever seen this man at any time in your
10 life other than in this courtroom?

11 A No, sir.

12 Q Do you recall if in June or July, 1971 this
13 man came to your house with Frank-Butch Pugliese? Frank

14 A No, sir.

No, sir

15 Q You are sure of that?

16 A Yes, sir.

17 Q In June or July, 1971 were you pregnant?

18 A Yes, I was.

19 Q Were you about four, five, six months pregnant
20 about that time?21 A About three -- yeah, about three months pregn-
22 nant.

23 Q When was the child born?

24 A The very end of December.

25 Q About December 17th, something like that.

2 A No, no, the very end.

3 Q The very end of December?

4 A Right.

5 Q Now, I show you Defendant's Exhibit E and I ask
6 that you look at this photograph.

7 Can you tell us what that photograph is?

8 A This is a photograph of my living room as this
9 was taken from standing near the sofa towards the dining
10 room that is on the other side of the wall.

11 Q And was that the way your living looked in June
12 or July of 1971?

13 A Yes, sir. A Yes, sir

14 MR. LOPEZ: Your Honor, at this time I ... Honor
15 offer this photograph.

16 I have no other questions.

17 MR. PHILLIPS: No objection, your Honor.

18 (Defendant DiNapoli's Exhibit E was received
19 in evidence.)

20 MR. LOPEZ: May I have just one other ques-
21 tion, your Honor.

22 THE COURT: Yes.

23 BY MR. LOPEZ:

24 Q You indicated that you know Frank Butch
25 Pugliese, is that correct?

2 A Yes.

3 Q Did you indicate to Mr. Phillips that he did
4 some work on the house, some construction work on the
5 house?

6 A Outside the house.

7 Q What was that, cementing?

8 A Yes.

9 MR. LOPEZ: No further questions, your
10 Honor.11 May this photograph be shown to the jury at this
12 time?

13 THE COURT: Sure.

14 MR. LOPEZ: Thank you very much.

15 CROSS EXAMINATION

16 BY MR. ELLIS:

17 Q Mrs. Patalano, my name is Robert Ellis and I
18 represent Butch Mamone, Angelo Mamone.19 As a matter of fact, we have met around the
20 courtroom, haven't we?

21 A Yes, we have.

22 Q Could you tell us when you first met Mr. Mamone?

23 A I met Butch around 1968.

24 Q Would you describe where you first met him?

25 A I was very good friends with his mother-in-law.

1 gta

Patalano-cross

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2 She owned a small restaurant where they served fish and
3 seafood and I was introduced to him through his mother-in-
4 law, him and his wife.

5 Q Was that restaurant known as the Clam Bar?

6 A Yes, I think so.

7 Q And was it located on Westchester and Crosby
8 Avenues?

9 A Westchester and Crosby?

10 Q Yes, ma'am.

11 Where was it, to the best of your recollec-
12 tion?

13 A I don't know streets, but I know how to get
14 there. there

15 It was located on Castle Hill Avenue, I think.

16 Q I didn't realize quite how far back you went,
17 Mrs. Patalano.

18 Did there come a time when it moved from
19 Castle Hill Avenue?

20 A Yes, there was.

21 Q And where did it move to?

22 A Under the el near Crosby Avenue.

23 Q And that el runs along Westchester Avenue,
24 is that correct?

25 A Well, I get that street mixed up all the time.

2 THE COURT: Is that the Pelham Bay Line?

3 THE WITNESS: Yes.

4 THE COURT: Okay. It is Westchester
5 Avenue.

6 Q Do you remember when the restaurant was moved
7 to that location?

8 A Offhand I can't recall.

9 Q And you met Mr. Mamone at the restaurant
10 through his in-laws, is that correct?

11 A On Castle Hill Avenue?

12 Q Yes, ma'am.

13 A Yes.

14 Q That is where you met him?

15 A Right.

16 Q And that was before you knew Mr. DiNapoli, is
17 that correct?

18 A Yes. That was around 1968 I met Butch.

19 MR. ELLIS: I have no further questions.

20 THE COURT: All right. Does anybody else
21 wish to inquire?

22 MR. PHILLIPS: I have a few more questions,
23 if I may, your Honor.

24 THE COURT: Go ahead.

25 MR. PHILLIPS: May I have the photograph that

1 gta

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2 is a defendant's exhibit?

3 THE COURT: Yes (handing).

4 REDIRECT EXAMINATION

5 BY MR. PHILLIPS:

6 Q Is this photograph which you just identified
7 a photograph of the entire wall separating the dining room
8 from the living room?

9 A Is that the entire wall?

10 Q Yes.

11 A Yes, it is.

12 Q And you are saying that the wall that separates
13 the dining room from the living room goes the entire
14 distance of the living room and the dining room, is that
15 correct?

16 A The wall itself goes the entire distance of that
17 whole wall you see in that picture because on the other
18 side in the dining room is a closet.

19 Q In other words, to go from the living room to
20 the dining room you have to go out into the hallway?

21 A To go from the living room to the dining room
22 you would have to go through the hallway, yes.

23 MR. PHILLIPS: I have no further ques-
24 tions, your Honor.

25 THE COURT: All right. Does anybody else

2 wish to inquire?

3 All right, Mrs. Patalano, step down.

4 (Witness excused.)

5 THE COURT: We are going to adjourn for the
6 day, ladies and gentlemen.

7 Marshals, take the jury out.

8 (The jury left the courtroom.)

9 THE COURT: Tonight everybody in the place
10 is going to surprise me, there are going to be no
11 applications.

12 MR. LOPEZ: Right, Judge, no applications.

13 MR. ENGEL: Your Honor, I have some 3500
14 material and I want to give notice to counsel.15 THE COURT: All right. See you tomorrow
16 morning at 10 o'clock.17 (Adjourned to February 22, 1974, at 10:00
18 a.m.)

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WITNESS INDEX

	<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
4	Pasquale Provitera (Resumed)			3109	
5				3168	3250
6	Albert J. Finn	3143	3148	3155	3158
7	Genevieve Patalano	3252	3269		

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	<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
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